

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

IN RE: CAPITAL ONE CONSUMER DATA
SECURITY BREACH LITIGATION

MDL No. 1:19md2915 (AJT/JFA)

**MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION TO FILE UNDER SEAL**

Pursuant to Local Rule 5, Plaintiffs request that the Court seal Exhibits 1-13 and portions of the Memorandum in Support of Plaintiffs' Motion to Compel Production of Mandiant Report and Related Materials ("Memorandum"), which cites to and incorporates information from Exhibits 1-13, which are documents produced by the Capital One Defendants and designated "Confidential" or "Confidential – Outside Counsel Only" pursuant to the Amended Stipulated Protective Order (Dkt. 368).

Before this Court may seal documents, it must: "(1) provide public notice of the request to seal and allow interested parties a reasonable opportunity to object, (2) consider less drastic alternatives to sealing the documents, and (3) provide specific reasons and factual findings supporting its decision to seal the documents and for rejecting the alternatives." *Ashcroft v Conoco, Inc.*, 218 F.3d 288, 302 (4th Cir. 2000). Plaintiffs request the filing under seal of the following Exhibits to their Memorandum because the Exhibits are documents produced by the Capital One Defendants and designated as either "Confidential" or "Confidential – Outside Counsel Only" pursuant to the Amended Stipulated Protective Order governing this matter:

- Exhibit 1, CAPITALONE_MDL_000258939;
- Exhibit 2, CAPITALONE_MDL_000097222;

- Exhibit 3, CAPITALONE_MDL_000185309;
- Exhibit 4, CAPITALONE_MDL_000115137;
- Exhibit 5, CAPITALONE_MDL_000100994;
- Exhibit 6, CAPITALONE_MDL_000247842;
- Exhibit 7, CAPITALONE_MDL_000248419;
- Exhibit 8, CAPITALONE_MDL_000251578;
- Exhibit 9, CAPITALONE_MDL_000097216;
- Exhibit 10, CAPITALONE_MDL_000232681;
- Exhibit 11, CAPITALONE_MDL_000172998;
- Exhibit 12, CAPITALONE_MDL_000086014;
- Exhibit 13, Capital One's Amended Responses to Plaintiffs' First Interrogatories.

Further, Plaintiffs request that portions of the Memorandum which quote or incorporate Exhibits 1-13 be filed under seal because the information contained in these Exhibits was produced by the Capital One Defendants as "Confidential" or "Confidential – Outside Counsel Only" pursuant to the Amended Stipulated Protective Order governing this matter.

The sealing of these Exhibits and the related portions of the Memorandum is the only practicable way to prevent public disclosure of the Confidential material contained therein. Plaintiffs cannot publicly share the information without violating the Amended Stipulated Protective Order. Thus, there is no less drastic alternative to sealing.

For these reasons, Plaintiffs respectfully request that this Court enter an order provisionally sealing Exhibits 1-13 and the designated portions of the Memorandum.

DATED: April 24, 2020

Respectfully submitted,

/s/ Steven T. Webster

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Plaintiffs' Co-Lead Counsel

CERTIFICATE OF SERVICE

I hereby certify that on April 24, 2020, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notice of electronic filing to all counsel of record.

/s/ Steven T. Webster

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